

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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RAYMOND GOMEZ,

Plaintiff,

- against -

NEW YORK STATE DEPARTMENT OF  
TRANSPORTATION, *et al.*

Defendants.

**ORDER**

**09-CV-5184 (JBW)(ALC)**

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**CARTER, United States Magistrate Judge:**

On March 3, 2010, Plaintiff filed a request for *pro bono* counsel pursuant to 28 U.S.C. § 1915(e). Plaintiff's request is denied without prejudice.

There is no right to counsel in a civil case. *Martin-Trigona v. Lavien*, 737 F.2d 1254, 1260 (2d Cir. 1984). Although a person accused of a crime is guaranteed counsel under the Constitution, the Court cannot compel any attorney to accept a civil case on a *pro bono* basis. *Mallard v. United States District Court*, 490 U.S. 296 (1989). However, pursuant to 28 U.S.C. § 1915(e)(1), "the court may request an attorney to represent any person unable to afford counsel."

In considering requests for appointment of counsel, the Court must first consider whether the plaintiff's position is "likely to be of substance." *Ferrelli v. River Manor Health Care Center*, 323 F.3d 196, 204 (2d Cir. 2003). If the claim asserted meets this threshold requirement, the Court should then consider secondary criteria, "including plaintiff's ability to obtain representation independently, and his ability to handle the case without assistance in light of the required factual investigation, the complexity of the legal issues, and the need for expertly

conducted cross-examination to test veracity.” *Cooper v. Sargenti*, 877 F.2d 170, 172 (2d Cir. 1989).

Plaintiff has not met the threshold requirement that his claim is “likely to be of substance” at this juncture. Therefore, Plaintiff’s request for *pro bono* counsel is denied without prejudice. Pending the outcome of Defendant’s contemplated Motion to Dismiss, Plaintiff may renew his motion after discovery.

**SO ORDERED.**

**Dated: Brooklyn, New York  
March 15, 2010**

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**ANDREW L. CARTER, JR.  
UNITED STATES MAGISTRATE JUDGE**